OLR Bill Analysis

sHB 6526 (as amended by House "A")*

AN ACT CONCERNING BROWNFIELD REMEDIATION AND DEVELOPMENT AS AN ECONOMIC DRIVER.

SUMMARY:

This bill makes many changes to the laws and programs governing the investigation and remediation of contaminated property (i.e., brownfields). It specifically:

1. updates the Office of Brownfield Remediation and Development's (OBRD) powers and duties;

2. makes permanent the municipal brownfield pilot program;

3. exempts "certifying parties" under the Transfer Act from investigating and remediating contamination that occurs after the property was remediated;

4. allows the environmental protection commissioner to reclassify surface and ground water beginning March 1, 2011;

5. requires the commissioner to evaluate the state's brownfield programs and laws;

6. makes more brownfields eligible for state funds and subject to regulatory requirements;

7. exempts government agencies and private organizations from paying Department of Environmental Protection (DEP) fees when cleaning up brownfields;

8. expands the range of benefits and eligible entities under the Abandoned Brownfield Cleanup (ABC) Program;

9. exempts municipalities and the bankruptcy court from the

Transfer Act when transferring titles to nonprofit organizations;

10. allows the DEP commissioner to waive some of the requirements for recording environmental use restrictions and releasing parties from their requirements;

11. extends the term of the brownfield working group;

12. eliminates the sunset date for funding new projects under the Connecticut Development Authority's (CDA) tax increment financing program;

13. establishes a program protecting parties investigating and remediating brownfields from liability to the state and third parties;

14. allows Bridgeport's special taxing district to issue bonds to finance property improvements backed by the revenue the improvements generate;

15. limits the liability of municipalities, special taxing districts, and metropolitan districts that do not charge the public for using their land for recreation purposes; and

16. exempts large municipalities from clean-up costs, fines, and penalties when they acquire an easement over a property and allow the public to use it without charge for recreation.

*House Amendment "A" makes many technical and substantive changes to the provisions regarding brownfield remediation and adds the provisions regarding Bridgeport's special taxing district and limiting municipal liability on land that the public may access, without charge, for recreation.

EFFECTIVE DATE: Various, see below

§ 1 — OBRD

The bill explicitly requires OBRD to promote and encourage people and organizations to develop and redevelop brownfields. It also

updates OBRD's statutory duties, requiring it to maintain an informational website and cooperate with state and local agencies and individuals developing and administering brownfield programs, reaching out to the community, coordinating regional brownfield clean-up efforts, seeking federal funds, and implementing other brownfield redevelopment initiatives.

The bill requires the Office of Policy and Management (OPM) secretary to help OBRD fulfill its mission. Under current law, the executive director of the Connecticut Development Authority and the commissioners of environmental protection, economic and community development, and public health must execute a memorandum of understanding (1) specifying their respective duties with respect to the office and (2) assigning one or more staff members to act as a liaison with OBRD. The bill requires the OPM secretary to become part of the agreement and assign staff liaison to OBRD.

EFFECTIVE DATE: July 1, 2011

§§1-3 — MUNICIPAL BROWNFIELD PROGRAM

Assistance

The bill makes permanent the pilot program providing grants and protection from liability to municipalities for investigating and remediating brownfields and renames it, the Municipal Brownfield Grant Program. Current law authorizes the program to fund brownfield projects in five municipalities, four based on population criteria and one without regard to population.

In making the program permanent, the bill explicitly makes the commissioner responsible for approving projects, allows her to approve more projects, and expands the range of eligible projects.

Current law allows the program to fund up to five projects. The bill allows the commissioner to annually identify brownfields for remediation and select up to six brownfields per funding round, a process the bill does not describe. She must choose four brownfields based on current law's population criteria and two, rather than one,

without regard to population. As under current law, she must fund the brownfields within available appropriations.

Besides increasing the number of projects the commissioner may approve, the bill expands the range of eligible projects. The program is currently open to abandoned and underutilized sites where the need to remediate contaminated soil and ground water complicates their redevelopment and reuse. The bill extends eligibility to sites with contaminated buildings. It also extends it to sites where contamination prevents them from being expanded, redeveloped, or reused.

Lastly, the bill transfers control over the program's fund account from OBRD to the DECD commissioner.

Verification of Remediation

By law, municipalities investigating and remediating brownfields under the program must have DEP or a licensed environmental professional (LEP) supervise the work. But current law requires DEP to indicate if:

1. the remedial work was completed;
2. the site meets the remediation standards; and
3. no further work is needed, except onsite monitoring or recording an environmental land use restriction.

When an LEP supervises, the bill explicitly allows the LEP to make these findings. It also prohibits the LEP and DEP from finding that no further work is needed if a required land use restriction has not been recorded.

The bill implicitly gives the DEP commissioner the option of auditing the work and requires him to notify the municipality within 90 days of the LEP report about whether he will do so.

EFFECTIVE DATE: July 1, 2011

§ 4 — CERTIFYING PARTY'S RESPONSIBILITY UNDER THE TRANSFER ACT

The bill exempts certifying parties under the Transfer Act from investigating and remediating contamination that occurs after they remediated the property.

By law, parties to the sale or transfer of a potentially contaminated property must notify DEP about the transaction, their knowledge about the property's condition, and the party that will investigate and, if necessary, remediate the property (i.e., the certifying party). The certifying party must provide this information on DEP's Form III. When the property is remediated, the certifying party must notify DEP to that effect by submitting a Form IV.

The bill specifies that the certifying party does not have to investigate or clean up any real or potential contamination that occurs after (1) data was collected at the site (i.e., completed Phase II investigation) or (2) from this time or after the Form III or Form IV was filed, whichever is later.

EFFECTIVE DATE: Upon passage

§ 5 — SURFACE AND GROUND WATER RECLASSIFICATION

The bill allows the DEP commissioner to reclassify surface and ground water beginning March 1, 2011, consistent with the state's water quality standards and in compliance with applicable federal requirements. It specifies the procedures he must follow when reclassifying these waters, which vary depending on whether he initiates the reclassification or responds to a person who requests it. In either case, the commissioner must hold a public hearing, which under the bill is not a contested case. (A contested case is a proceeding in which an agency must determine a party's rights, duties, or privileges after a hearing.)

If the commissioner initiates the reclassification, he must hold a hearing on the proposal (1) publishing a newspaper notice about its time, date, and place and (2) notifying each affected municipality's chief executive officer and public health director by certified mail

within 30 days before the hearing. After the hearing, the commissioner must provide notice of his decision in the *Connecticut Law Journal* and to the affected municipalities' chief elected officials and health directors.

People requesting a reclassification must apply to the commissioner and provide any information he requests. The commissioner must publish a notice about the hearing at the requestor's expense at least 30 days before the hearing. The notice must identify the requestor and the affected waters, indicate the commissioner's tentative decision about the proposed reclassification, and provide other information about the hearing the bill requires. The notice must be mailed to the chief executive officers and the public health directors of the affected municipalities at least 30 days before the hearing. After the hearing, the commissioner must provide notice of his decision the same way he provides notice of decisions regarding the reclassifications he initiates.

EFFECTIVE DATE: Upon passage

§ 6 — EVALUATING REMEDIATION PROGRAMS

The bill requires the DEP commissioner to begin evaluating the state's brownfield remediation programs and the laws that affect this activity within seven days after it takes effect. He must report his findings to the governor and the Commerce and Environment committees by December 15, 2011. The commissioner must do this within available appropriations and address these points:

1. the factors that influence the time it takes to investigate and remediate a brownfield under existing programs;

2. the number of properties that enter each remediation program, the rate at which they do so, and the number that complete each program's requirements;

3. the use of LEPs in expediting the remediation process;

4. verification audits LEPs complete;

5. statutory programs providing liability relief to existing and potential landowners;

6. comparison of existing remediation programs to states with a single program;

7. the commissioner's use of studies and other resources available from various organizations; and

8. recommendations to address issues the report raises or streamline or expedite the remediation process.

EFFECTIVE DATE: Upon passage

§ 7 — DEFINITION OF BROWNFIELDS

The bill expands the statutory definition of brownfields, thus making more types of property (1) eligible for state and local assistance and (2) subject to regulatory requirements. Under current law, a brownfield is an abandoned or underused property that is not being redeveloped or reused because of real or potential contamination requiring remediation. The contamination can be in the ground water, soil, or buildings and must be investigated, assessed, and cleaned up while the property is being restored, redeveloped, or reused, or before these activities can occur.

The bill expands the definition to include abandoned or underused property where real or potential contamination must be investigated or remediated before it can be redeveloped, reused, or expanded.

EFFECTIVE DATE: July 1, 2011

§ 8 — DEP FEE EXEMPTIONS

The bill exempts state, municipal, and private organizations from paying DEP fees when cleaning up brownfields. It exempts entities receiving state funds for this purpose. It also exempts specified state entities from paying fees for new or pending applications for environmental condition assessment forms, covenants not to sue, and Transfer Act forms when investigating or remediating brownfields

before siting a state facility. This exemption applies to agencies, authorities, and higher education institutions.

The bill also exempts parties from paying any DEP fees when they intend to investigate and remediate brownfields without state assistance. In these cases, they pay no fees relating to contamination other parties caused before they acquired the property.

EFFECTIVE DATE: July 1, 2011

§§ 9-11 — ABANDONED BROWNFIELD CLEANUP (ABC) PROGRAM

Expanded Benefits

The bill expands the range of benefits and eligible entities and properties under this program, which exempts its participants from investigating and remediating contamination that emanated from the property before they acquired it. The bill also limits their liability to the state or any third party for this contamination to anything they did to cause or contribute to the contamination or negligently or recklessly exacerbate it.

The bill exempts the participants from filing the required Transfer Act forms, designates them innocent third parties, and specifies conditions exempting them from liability to the DEP commissioner and other parties implementing abatement orders under the statutes and common law. But this exemption does not extend to negligent and reckless actions exacerbating the contamination.

The bill also exempts them from paying the covenant not to sue fee and allows them to transfer the covenant to subsequent owners as long as the property is being remediated or was remediated according to DEP standards.

Eligible Property

The bill expands the range of property eligible to participate in the program. Under current law, a brownfield qualifies if it has been unused or significantly underused since October 1, 1999. Under the bill, it qualifies if it has been in either condition for at least five years

before the participant applied to have the property admitted into the program.

The bill allows the DECD commissioner to waive this five-year criterion if the applicant can show that the property otherwise qualifies for the program and demonstrates the value of redeveloping it.

Lastly, the bill expands one of the criteria a property must meet for the commissioner to admit it into the program. Under current law, she can admit the property if the party that contaminated it cannot be determined, no longer exists, or cannot remediate it (i.e., responsible party criteria). Under the bill, she can admit the property if the responsible party must remediate the contamination, including the contamination that emanated from the property.

Eligible Applicants

The bill opens the ABC program to municipalities, their economic development agencies, and private entities (nonprofit and for-profit) acting on a municipality's behalf. It also allows them to nominate property for the program regardless of whether they own it. The bill also exempts municipalities from having to meet the responsible party criteria described above for property they own.

The bill eliminates a condition an applicant must meet before the commissioner can admit the property into the program. Under current law, the applicant must enter into DEP's voluntary remediation program, agree to investigate and remediate the contamination according to the applicable standards and regulations, and eliminate contamination emanating or migrating from the property. Further, the applicant cannot be the certifying party under the Transfer Act (i.e., the party to a transaction responsible for certifying the property's condition before and after remediation). The bill eliminates the latter condition.

Program Administration

The bill explicitly requires parties acquiring property in the program to do so by submitting an application to the DECD

commissioner, which she must prescribe and use to determine if they meet the program's eligibility requirements. The bill implicitly requires her to determine an applicant's eligibility in consultation with the DEP commissioner.

The bill specifies that the program's liability relief and other benefits apply only if the DECD commissioner accepts the property into the program.

EFFECTIVE DATE: July 1, 2011, except for the Transfer Act and covenant not to sue provisions, which take effect upon passage.

§ 10 — TRANSFER ACT EXEMPTIONS

The bill exempts from the Transfer Act title transfers from a municipality or bankruptcy court to a nonprofit organization. It also makes two conforming changes exempting from the act brownfields that are participating in the ABC program and the new liability protection program the bill creates (see § 17).

EFFECTIVE DATE: Upon passage

§§ 12-14 — ENVIRONMENTAL USE RESTRICTIONS (EUR)

The bill allows the DEP commissioner to waive some of the requirements for recording EURs and releasing parties from them. An EUR is an easement a property owner records in the municipal land records and that prohibits specific uses or activities at a property that could harm human health and the environment.

The law prohibits an owner from recording an EUR unless other parties with an interest in the property accept the restriction. The owner must record a document to that effect when he or she records the EUR (i.e., subordination agreement). Current law allows the commissioner to waive this requirement if the EUR has little or no effect on the party's interest in the property. The bill requires the commissioner to waive the requirement that the owner obtain subordination agreements from parties whose interest in the land creates no conditions the EUR prohibits.

The bill changes the conditions under which the commissioner can release parties from the EUR's restrictions. Under current law, he can release a party for conducting an activity on all or part of the property if the owner remediated it or the portion where the activity will occur. The owner must also record the release in the land records (§ 12).

The bill distinguishes between permanent and temporary releases and allows the commissioner to grant temporary ones without requiring the owner to remediate all or part of the property. The owner must still record the release in the land records, unless the commissioner waives this requirement, which he may do if the activity is "sufficiently limited in scope or duration."

The bill specifically authorizes the attorney general and the DEP commissioner to enforce the statutes authorizing EURs. Current law allows them to enforce EURs without reference to the authorizing statutes.

The bill also specifies that the commissioner's regulations governing EURs may cover fees, financial surety, monitoring, and reporting requirements.

EFFECTIVE DATE: Upon passage

§ 15 — BROWNFIELDS WORKING GROUP

The bill extends the term of the working group to January 15, 2012, from January 15, 2011. The group was formed under PA 10-135, which required it to study how the state's brownfields were being cleaned up and remediated and report its findings to the Commerce Committee by its expiration date. The bill requires the group to submit another report on this topic by January 15, 2012, to the committee and the governor.

The bill also increases the group's membership from 11 to 13, requiring the governor to appoint the two additional members.

EFFECTIVE DATE: Upon passage

§16 — CDA TAX INCREMENT BOND FINANCING PROGRAM SUNSET

The bill eliminates the July 1, 2012, sunset date for funding new projects under CDA's tax increment financing program. Under this program, CDA issues bonds on behalf of a municipality and backs them with the new or incremental property tax revenue a completed project generates. The law allows CDA to issue these bonds for (1) cleaning up and redeveloping brownfield projects anywhere in the state and (2) financing information technology projects in economically distressed municipalities.

EFFECTIVE DATE: July 1, 2011

§ 17 — LIABILITY PROTECTION PROGRAM

Overview

The bill protects parties from liability to the state and third parties for cleaning up brownfields according to its requirements. Meeting these requirements extends the protections during or after remediation to a brownfield's immediate prior owner and the party acquiring it. Program participants are liable for contaminating the property or contributing to contamination that was there before they acquired it.

The bill requires the DECD commissioner to establish, within available appropriations, a program for providing these protections, but it assigns significant administrative duties to the DEP commissioner. The DECD commissioner must select brownfields for participating in the program; the DEP commissioner must monitor and audit their remediation.

Type and Scope of Benefits

The program protects participants from liability to the state and third parties only for contamination that existed before they acquired the property and that they did not cause, exacerbate, or contribute to.

But the protection is not absolute. A participant must clean up the property according to DEP standards. It or its successors must also comply with any remediation orders DEP may issue under the bill

after the property has been remediated.

The participants are also exempt from filing the Transfer Act forms when they convey their brownfield property. But this exemption does not relieve them from complying with any other laws requiring parties to certify a property's environmental condition.

Lastly, the DECD commissioner's decision accepting the property into the program does not affect decisions regarding it under other state and federal brownfield funding programs. Nor does it prevent the participants from applying for funds under those programs.

Eligibility

Property. DECD may admit a property into the program if it and its owners meet the bill's application requirements. The property must be a "brownfield" whose redevelopment will benefit the economy (see § 7), and the applicant must show that the contamination levels exceed DEP's standards for protecting the environment, health, and public welfare.

Property undergoing remediation or subject to remedial orders under other programs can participate in the bill's program. Property being remediated under a DEP cleanup program qualifies for the program, but not one being remediated under a state or federal cleanup order.

Property contaminated by polychlorinated biphenyls (PCB), a chemical used in manufacturing, can be accepted into the program, but acceptance does not relieve the owners from complying with PCB regulations. The same applies to property where petroleum and chemicals leak from underground tanks.

Applicants. The program is open to people, businesses, nonprofit organizations, municipalities, public and private municipal economic development agencies, and state agencies. They can apply to have a property admitted into the program if they are "innocent landowners," "bona fide prospective purchasers," or contiguous property owners.

An innocent landowner is a person or entity that owns property another party contaminated. A bona fide prospective purchaser is a person or entity that acquires a brownfield after July 1, 2011 and shows, by a preponderance of the evidence, that it:

1. acquired the property after it was contaminated;

2. is complying with any environmental land use restrictions imposed on the property;

3. has inquired about its previous owners and how they used it;

4. has provided the notices required after discovering or releasing hazardous substances and taken appropriate steps to stop the release, prevent future releases, and prevent or limit harm to people and the environment;

5. is cooperating with people authorized to contain or clean-up the contamination; and

6. is providing the information DEP requests.

A contiguous property owner is a person or entity that owns property next to a brownfield owned by another party. The contiguous owner can participate in the program if it:

1. addresses the contamination on the owner's property as the bill specifies,

2. complies with environmental land use restrictions,

3. provides any information DEP requests, and

4. provides all required notices regarding the contamination on its property.

Innocent landowners, bona prospective purchasers, and contiguous owners can participate in the program only if they did not contaminate the property and are unaffiliated with the parties that did.

Acceptance in the Program

Method. DECD can accept a brownfield into the program by application or nomination. Eligible applicants may submit applications to the DECD commissioner on forms she provides. Municipalities and economic development agencies may nominate brownfields they do not own for acceptance into the program, but the bill does not specify whether they can do so without the owner's permission or the process they must follow.

The commissioner may accept up to 32 brownfields per year into the program.

Application Content. The application must include:

1. a title search,
2. a DEP-prescribed Phase I Environmental Site Assessment prepared by or for a bona fide prospective purchaser,
3. a current property inspection,
4. proof that the applicant and the property qualify for the program,
5. information the commissioner needs to select brownfields based on the bill's statewide portfolio factors (see below), and
6. other information she requests.

(A Phase I Environmental Site Assessment evaluates a property's historical and current uses and the activities conducted there. The information helps identify potentially contaminated areas.)

Certifications. When applying for the program, applicants must certify that it meets the program's eligibility criteria. Specifically an applicant must certify, on a form the commissioner provides, that it is:

1. an innocent landowner, a bona fide prospective purchaser, or a contiguous property owner;

2. did not contaminate the property and is not affiliated with the party that did; and

3. did nothing to pollute the state's waters.

The applicant must also certify the property's condition. It must show that the property is a brownfield and that the contamination exceeds DEP's remediation standards. The applicant must also show that the brownfield is not subject to federal or state enforcement action or on the state or national lists of contaminated sites.

The commissioner, in consultation with the DEP commissioner, must determine if the certifications are accurate and consider only those that are.

Statewide Portfolio Factors. The DECD commissioner must select applications to create a diverse portfolio of brownfield projects from around the state. She must do this in consultation with the DEP commissioner based on the following "statewide portfolio factors":

1. a brownfield's capacity to create or retain jobs and generate the revenue needed to sustain itself,

2. the applicant's readiness to investigate and remediate the property,

3. the portfolio's geographic makeup,

4. the populations of the municipalities represented in the portfolio,

5. the brownfield's size and complexity,

6. the time and extent to which the brownfield has been underused,

7. the extent to which its remediation will increase the municipality's grand list,

8. the extent to which the remediated brownfield is consistent with

municipal and regional planning objectives and addresses smart growth and transit-oriented development principles, and

9. other factors the DECD commissioner chooses to consider.

Fees

The bill imposes fees on parties accepted into the program (i.e., acceptance fees) and on those that subsequently acquire their property (i.e., transfer fees).

Acceptance Fees. Applicants accepted into the program (i.e., participants) must pay the DEP commissioner a fee equal to 5% of the brownfield's assessed value as of the municipality's most recently completed grand list. (Municipalities annually update their grand lists on October 1.) A participant must pay the fee in two equal installments, but the bill sets conditions for reducing or eliminating the amounts.

The participant must pay the first installment within 180 days after the DECD commissioner approves the application and the second within four years after that date. DEP must deposit the fee in the Special Contaminated Property Remediation and Insurance Fund, which provides low-interest loans for investigating and remediating contaminated property. (DECD administers the fund in cooperation with DEP).

The DEP commissioner must reduce the installments if the participant finishes investigating and remediating the brownfield ahead of the bill's deadlines for completing these tasks. He must reduce the first installment by 10% if the participant finishes investigating the property within 180 days after the DECD commissioner approves its application. (As discussed below, the bill gives participants up to two years to investigate the property.) The participant must document this fact on a form the DEP commissioner provides and whose content an LEP approved in writing.

The DEP commissioner must eliminate the second installment if the participant cleans up the property within four years after the

application's approval date and submits the supporting documentation. (The bill gives participants up to eight years to remediate a property.)

The commissioner must extend the four-year deadline if the participant requests his approval regarding a remediation standard and he takes over 60 days to reply. The extension must equal the number of days it took the commissioner to respond after the 60-day deadline, but not including the days it took the participant to respond to the commissioner's request for more information. (Under the bill, the commissioner can request information anytime while the property is in the program.)

Participants that do not remediate property within four years may still qualify for relief from paying the second installment. If a participant investigates contamination that migrated from the property, the commissioner must reduce the installment or give the participant a refund for the reasonable environmental service costs it incurred for investigating the off-site contamination, up to the installment amount. The participant must provide information showing that it investigated the contamination according to DEP standards. The information must be approved by an LEP and submitted on a DEP form.

The bill exempts municipalities and economic development agencies from paying application fees, but requires them collect and remit the fees to DEP when they transfer the property.

The bill implicitly allows municipalities and economic development agencies acting on their behalf to request fee waivers for government- and nonprofit-owned property within their respective jurisdictions; it allows the DEP commissioner to grant them based on:

1. the property's location within a distressed municipality,

2. the extent to which the municipality or the economic development agency demonstrates the project's economic and community impacts, and

3. proof regarding the property owners' eligibility and that paying the fee will undermine the project's success.

Transfer Fee. Parties acquiring property in the program must pay a $10,000 transfer fee. As with the acceptance fee, DEP must deposit the fee revenue in the Special Contaminated Property Remediation and Insurance Fund. The bill exempts municipalities and municipal economic development agencies from paying this fee when they acquire property in the program, but it requires them to collect and remit it to DEP if they transfer the property to another party.

Participant Duties and Obligations

Although the bill protects participants from liability to the state and third parties for contamination caused by others, it requires them to investigate and remediate it according to DEP standards. They must characterize, abate, or remediate the contamination on the property according to prevailing standards and guidelines and clean it up according to the plan and schedule they must submit to DEP for this purpose.

But participants may become liable for this contamination if the DEP commissioner subsequently learns that the decisions accepting the property into the program and approving its remediation were based on incomplete or inaccurate information. Specifically, he can require a participant to act if:

1. he can show that the participant or its successor knew or had reason to know that the information in the documents attesting to the property's remediation was false or misleading;

2. new information shows that the property was contaminated by other substances that were unknown when the property was accepted into the program;

3. the participant failed to comply with its remediation plan and schedule; and

4. conditions have changed and now endanger the environment

and human health, such as a change in the property's use from business or other nonresidential use to residential use.

Participants are not obligated to characterize, abate, or remediate hazardous plumes or substances beyond the property's boundaries (except if they caused them), but they must comply with the notification requirements the law imposes on property where the contamination spreads beyond its boundaries.

Participants are liable for any contamination they cause or contribute to and must investigate and remediate it.

Investigation and Remediation Process

Brownfield Investigation Plan and Remediation Schedule. The bill specifies the process and timeframes for investigating and remediating the property. Participants must submit an investigation plan and remediation schedule for this purpose to the DEP commissioner within 180 days after their applications were approved. These documents must be signed and stamped by an LEP.

The plan and schedule must show that:

1. the investigation will be completed within two years of the application's approval date,

2. remediation will be started within three years of that date, and

3. remediation will be completed within eight years of the approval date.

(The plan and schedule must also show that the property will be sufficiently remediated to support "verification" or "interim verification." Verification is the standard signifying that the property has been investigated and remediated according to state standards. Interim verification is the standard signifying that the soil has been remediated but that the ground water still requires remediation under a "long-term remedy.")

The DEP commissioner may extend the eight-year remediation

deadline only if the participant can show that reasonable progress was made toward remediating the property but that forces beyond the participant's control delayed the work.

The plan and schedule must address only the contamination that exists within the property's boundaries, unless the participant caused it to spread to other property. In any case, the participant must still comply with the notice requirements the law imposes on parties owning contaminated property.

The plan and schedule must include a timeframe for notifying specified parties and the public before the remediation begins. The participant must notify adjacent property owners by posting a notice on the brownfield advising them about the planned remediation or mailing a notice about it to them. It must also notify the affected municipality's public health director and the general public. Lastly, it must publish a notice about the remediation in a newspaper serving the affected municipality.

The public has 30 days from the last notice to comment on the proposed remediation. The bill implicitly requires the participant to respond to the public comments by allowing the participant to start cleaning up the property only after it submits those comments and its responses to the DEP commissioner.

Implementing the Plan and Schedule. When implementing the plan, the participant must submit applications for any permits it needs to DECD's permit ombudsman.

The participant must also document when it completes a task and notify the DEP commissioner to that effect. It must document that an investigation has been completed according to prevailing standards and guidelines on a form the commissioner must provide. An LEP must approve the documentation in writing.

The participant must also document and notify the commissioner when the remedial work begins. It must notify the commissioner on a form he provides, accompanied by an LEP-approved remedial action

plan.

Lastly, the participant must document that the property was remediated, which under bill must occur under a LEP's supervision. The participant must document the remediation by submitting a remedial action report in which the LEP describes the remedial work, opines that it meets the remediation standards, and issues a verification or interim verification. The LEP must sign and stamp the report. The participant must submit the report to the DEP and DECD commissioners.

Participants submitting interim verifications and their successors must continue remediating the ground water until the remediation standards are met. They must:

1. operate and maintain the long-term remedy as the remedial action report, the interim verification, and the commissioner's orders require;

2. prevent the land from being exposed to contaminated ground water plumes exceeding the remediation standards;

3. take all reasonable steps to contain any ground water plumes on the property; and

4. submit annual status reports to the DEP and DECD commissioners.

Lastly, participants must keep the records that were created while the property was being investigated and remediated for at least 10 years and make them available upon request to the DEP and DECD commissioners.

Before approving the verification or interim verification, the DEP commissioner may enter into a memorandum of understanding with the participant requiring further remedial action and monitoring needed to protect the environment and human health.

Audits

Timing. The bill authorizes audits to verify if a property was properly investigated and remediated. It authorizes the DEP commissioner to audit these actions under two scenarios. He can audit them anytime he requests information from the participant and receives no response within 60 days. He can also audit them after the participant submits the remedial action report and the verification or interim verification.

First 180 Days. During the first 180 days after receiving these documents, the commissioner can audit the process for any reason. He must first notify the participant about whether he will do so within 60 days after receiving the documents. If he decides to audit the actions, he must complete the audit within 180 days after receiving the documents. The commissioner can request additional information anytime during the audit period. If he does not receive it within 14 days after requesting it, the audit is suspended and the 180-day clock stops until the participant provides the information. But the commissioner may restart the audit if the participant fails to respond to the commissioner within 60 days after his request.

After 180 Days. The commissioner may audit the remediation 180 days after receiving the verification or interim verification if he believes they were based on inaccurate, erroneous, or misleading information or determines that post verification monitoring and other actions have not been taken. He may also audit the remediation after 180 days if an environmental land use restriction was not recorded in the land records, the law was violated with regard to verification, or the remediation may not be preventing a substantial threat to the environment and public health.

Audit Findings and Reply. Within 14 days after completing the audit, the commissioner must send the audit findings to the participant, the LEP, and the DECD commissioner. In doing so, he may approve or disapprove the remedial action report and, if he does the latter, explain why.

If the commissioner disapproves the remedial action report and the

verifications, the participant must submit to him and the DECD commissioner a "report of cure of noted deficiencies" within 60 days after receiving the commissioner's disapproval notice. The DEP commissioner has up to 60 days to approve or disapprove this report.

Onset of Liability Protections

The bill's liability protections begin after the DEP commissioner notifies the participant that he will not audit the process or that his audit findings have been addressed. They also begin if he fails to act on a remedial action report and the accompanying verifications within 180 days after receiving them.

Under both outcomes, the participant is not liable to the state or third parties for the costs incurred to remediate the contamination identified in the plan. Nor is it liable for the costs relating to equitable relief or damages resulting from the contamination. The protection also applies to historical off-site impacts, including deposition, waste disposal, the effects on sediments, and damage to natural resources.

But the protection does not extend to contamination that must be addressed under the regulations governing PCBs and underground storage tanks. Nor does it stop the commissioner from requiring further remediation after the liability protections begin. As noted above, the bill specifies conditions under which he may do so.

Property Transfers

The participant's keeps the bill's liability protections after it transfers property to another party. If a participant transfers the property before the DEP commissioner issues a no audit letter or the other events signaling the property's remediation, it is not liable to the state or third parties for the costs incurred to remediate the contamination identified in the plan. Nor is it liable for the costs relating to equitable relief or damages resulting from the contamination. The protection also applies to historical off-site impacts, including deposition, waste disposal, the effects on sediments, and damages to natural resources.

As with the liability protections above, they do not extend to contamination that must be addressed under the regulations governing PCBs and underground storage tanks. Nor does it stop the commissioner from requiring further remediation after the liability protections begin. As noted above, the bill specifies conditions under which he may do so.

The liability protection also extends to the party that acquires the property (i.e., transferee) and to the party that owned it before the participant acquired it. The transferee receives the protection if:

1. when the transfer is made, the participant has complied with the bill and the plan and schedule and

2. the transferee meets the bill's eligibility criteria, pays the $10,000 transfer fee, and assumes the participant's obligations under the bill.

The bill's protections also flow to the party who owned the property immediately before the participant acquired it (i.e., immediate prior owner). But they do not extend to contamination emanating from the property or to penalties, fines, costs, expenses, and obligations that the immediate prior owner incurred while it owned the property. Nor do they extend to an owner that failed to fulfill any legal obligation to investigate and remediate the contamination at or from the property.

EFFECTIVE DATE: July 1, 2011

§ 18 — BRIDGEPORT SPECIAL TAXING DISTRICT

The bill expands the bonding powers of Bridgeport's special taxing district. PA 05-289 authorized the district's formation to finance roads, sewers, and other infrastructure and pay for the services needed to maintain it. It authorized the district to issue up to $190 million in bonds secured by:

1. the district's full faith and credit;

2. fees, revenues, and benefit assessments; or

3. a combination of its full faith and credit and fees, revenues, and benefit assessments.

The bill allows the district to issue bonds, without limit, to:

1. finance property acquisition and improvements and back them only with fees, revenues, benefit assessments, or charges the district imposes on the property and

2. refund outstanding bonds, notes, and other obligations.

EFFECTIVE DATE: July 1, 2011

§ 19 — LANDOWNER RECREATIONAL LAND IMMUNITY

By law, a landowner who makes land available to the public for recreational purposes without charging admission owes no duty of care to (1) keep the land safe for recreational purposes or (2) give any warning of a dangerous condition, use, structure, or activity on the land to those entering for recreational purposes.

Additionally, the law provides that such landowner does not thereby (1) make any representation that the land is safe for any purpose, (2) confer on the person using the land a legal status entitling the person to duty of care by the owner, or (3) assume responsibility for any injury to a person or property that is caused by the landowner's act or omission.

The statutory immunity from liability does not apply to (1) willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity or (2) injuries suffered in any case where the landowner charges people who use the land for recreational purposes.

For purposes of these liability protections, current law defines "owner" as the possessor of a fee interest, tenant, lessee, occupant, or person in control of the premises. The Connecticut Supreme Court ruled that municipalities are not "owners" under these provisions (*Conway v. Wilton*, 238 Conn. 653 (1996)). The bill expands this definition to include any (1) town, city, borough; (2) special taxing

district; and (3) metropolitan district created by special act or under the statutes. It also explicitly includes railroad companies in the definition.

By law, "charge" means the admission price or fee asked in return for an invitation or permission to use the land. The bill specifies that any state or local taxes collected under state law are not considered a charge for using the property.

EFFECTIVE DATE: October 1, 2011

§ 20 — MUNICIPAL LIABILITY PROTECTIONS FOR CONTAMINATED PROPERTY

The bill sets conditions protecting large municipalities from liability to the state for pollution or hazardous waste on or spreading from property for which they have an easement. The protection applies to anything discharged or deposited in any public or private sewer, or that otherwise comes into contact with any water, that contaminates or cause significant and harmful change in the temperature of any state waters. It also applies to waste posing a present or potential threat to human health or the environment when improperly handled.

The protection covers municipalities with a population over 90,000 that acquired and recorded an easement allowing the public to use the land for recreation without charge. But it does not relieve them from ensuring that the contamination poses no risks to the public based on how they may use the land.

Under the bill, these municipalities are not liable to the state for any fines, penalties, or costs associated with investigating or remediating the property. Municipalities are exempt from the clean-up costs, fines, and penalties if:

1. the contamination occurred before a municipality acquired the easement;

2. the municipality or its agent did not cause, create, or contribute to the contamination; and

3. the municipality or members of the public using the land

covered by the easement do not contribute or exacerbate the contamination or prevent others from investigating and remediating it.

The bill's protection applies to only the municipalities and the land subject to the easement. It does not limit or affect the landowner's or operator's liability under any law, including those requiring them to address pollution and pay fines and penalties.

EFFECTIVE DATE: October 1, 2011

BACKGROUND

Related Bill

HB 6221 (File 756) eliminates the July 1, 2012, sunset for funding projects with CDA bonds backed by incremental property tax revenue.

COMMITTEE ACTION

Commerce Committee

Joint Favorable Substitute
Yea 19 Nay 0 (03/22/2011)

Environment Committee

Joint Favorable
Yea 23 Nay 0 (04/27/2011)

Finance, Revenue and Bonding Committee

Joint Favorable
Yea 52 Nay 0 (05/10/2011)

Judiciary Committee

Joint Favorable
Yea 32 Nay 0 (05/18/2011)